

General Information Letter: Transportation company transporting goods through Illinois not protected from tax under Public Law 86-272.

August 13, 2003

Dear:

This is in response to your letter dated June 5, 2003, which was referred to Legal Services (Income Tax) July 14, 2003. The nature of your letter and the information provided requires that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be accessed at [www.Iltax.com](http://www.Iltax.com).

Your letter states as follows:

I represent a Michigan corporation that has one office and 15 employees located in Michigan. The corporation's principal activity involves transportation services, which is performed by independent contractors and employee drivers, who operate through and within the State of Illinois. Automotive freight is the main commodity transported via air-freight or truck freight through interstate commerce. This corporation rents and leases the majority of the equipment used to perform these services, and also leases the office space in Michigan.

My clients are aware of different interpretations of "substantial nexus" for motor carriers for the purpose of imposing income and franchise tax obligations. They wish to determine Illinois' position concerning their income and or franchise tax obligations. In order to determine this position, they want to present the fact pattern described below to the state and wish to have the state give them answers to the questions they pose which follow the description of facts.

#### Facts

Company is a Michigan C corporation and there is no parent company.

Company only has employees in Michigan.

Company sales personnel may or may not enter the State of Illinois in a given year.

Company has 10 employee drivers who may drive through and within the State of Illinois.

Company may have 15-25 owner operators leased to it in any given year who may drive through and within the State of Illinois.

Company may run approximately 100,000 miles in the State of Illinois during any given year, which equates to 7.25% of its total miles.

Company leases and rents the majority of its equipment from Michigan companies, which consists of ten 12' to 24' cargo vans, five to ten semi tractors, and five to ten 48' to 53' dry van trailers.

Company files a Michigan IFTA quarterly fuel tax return and reports all state mileage and fuel as well as its Illinois mileages, fuel consumption, and fuel purchased during a given quarter.

Company may or may not have customers located in the State of Illinois in any given year.

Company may or may not have pick-up and deliveries within the State of Illinois in a given year.

Company has interstate operating authority, as well as Michigan and Ontario, Canada intrastate operating authority.

#### Questions

As stated above, my client's objective in disclosing this information is to ascertain whether the contact with the state described above would subject it to income or franchise tax. Based on this objective we would ask for answers to the questions listed below.

1. Based on the facts stated above, does the Corporation have nexus for income and franchise tax purposes?
2. If it is determined that this C Corporation does not have nexus in the State of Illinois based on the facts above, could you provide factors or circumstances which might cause this Corporation to become taxable?
3. If this C Corporation were an S-Corporation, would it be taxable in the State of Illinois?
4. Can you provide written information and documentation specific to motor carriers in terms of determining nexus for the State of Illinois?
5. Are there any other Illinois taxes that may apply to this Corporation? If so, what are these taxes?

#### **RULING**

The determination whether a taxpayer has nexus with Illinois is extremely fact-specific. Therefore, the Department does not issue rulings regarding whether a taxpayer has nexus with the State. For information regarding nexus, See Department of Revenue Regulations Section 100.9720, which may be accessed from the Department's web site. In addition, the following general information may be provided.

The United States Constitution restricts a state's power to subject to income tax foreign corporations. The due process clause requires that there exist some minimum connection between a state and the person, property, or transaction the state seeks to tax (*Quill Corp. v. North Dakota*, 504 U.S. 298, 112 S.Ct. 1904 (1992)). The commerce clause requires that a state's tax be applied only to activities with a substantial nexus to the taxing state (*Id.*) Where any part of a foreign corporation's income is allocable to Illinois in accordance with the provisions of Article 3 of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/301-308), Illinois will assert jurisdiction to tax such corporation. Therefore, unless protected by Public Law 86-272, 15 U.S.C.A. 381, a foreign corporation is liable for Illinois income tax where

any portion of its income is allocated to Illinois.

IITA section 304(d) sets forth the manner in which business income from furnishing transportation services must be apportioned to Illinois. With respect to such business income (other than that derived from transportation by pipeline) section 304(d)(1) states in part:

Such business income (other than that derived from transportation by pipeline) shall be apportioned to this State by multiplying such income by a fraction, the numerator of which is the revenue miles of the person in this State, and the denominator of which is the revenue miles of the person everywhere. For purposes of this paragraph, a revenue mile is the transportation of 1 passenger or 1 net ton of freight the distance of 1 mile for a consideration.

It appears from your letter that Corporation generates revenue miles in Illinois. Consequently, a portion of its net income is allocable to Illinois in accordance with the provisions of Article 3 of the IITA. Therefore, Company is liable for Illinois income tax.

In general, Public Law 86-272 (15 U.S.C.A. 381 (1959)) prohibits a state from imposing an income tax on a foreign corporation where the business activities of such corporation within the state consist solely of the solicitation of orders for sales of tangible personal property.

The facts included in your letter indicate that Corporation is engaged in Illinois in the business of providing transportation services. Therefore, Corporation is not protected by the provisions of Public Law 86-272. See 86 Ill. Adm. Code 100.9720 (enclosed).

Illinois franchise tax is administered by the Secretary of State. Information regarding Illinois franchise tax can be obtained from the Illinois Secretary of State by writing the following address.

Office of the Illinois Secretary of State  
Department of Business Services  
Room 328  
Springfield, IL 62756

As stated above, this is a GIL. A GIL does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and wish to obtain a binding private letter ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of 86 Ill. Adm. Code 1200.110(b). If you have questions regarding this GIL you may contact Legal Services at (217) 782-7055. If you have further questions related to Illinois tax laws, visit our web site at [www.ILtax.com](http://www.ILtax.com) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Brian L. Stocker  
Staff Attorney (Income Tax)